

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TZVIA WEXLER,

Plaintiff

v.

CHARMAINE HAWKINS, et al.,

Defendants

:
:
:
:
:
:
:

CIVIL ACTION

No. 19-CV-5760-CMR

ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of Plaintiff's Response to Defendants' Motions in Limine to preclude evidence of the Philadelphia Police Department's Directives and any surresponses thereto, it is hereby ORDERED that Defendants' Motions are DENIED.

BY THE COURT:

Cynthia M. Rufe
U.S. District Judge

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TZVIA WEXLER,	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	No. 19-CV-5760-CMR
CHARMAINE HAWKINS, et al.,	:	
Defendants	:	

**PLAINTIFF’S RESPONSES TO DEFENDANTS’ MOTIONS IN LIMINE TO
PRECLUDE EVIDENCE OF THE PHILADELPHIA POLICE
DEPARTMENT’S DIRECTIVES**

Plaintiff Tzvia Wexler, by and through her undersigned counsel, hereby responds to Defendants’ motion in limine regarding evidence of the Philadelphia Police Department’s Directives. Plaintiff requests said motions be denied and she be allowed to introduce those Directives as evidence. In support of these responses, Plaintiff incorporates the attached memorandum of law.

Date: December 21, 2023

Respectfully submitted,

/s/ Thomas Malone
Thomas Malone, Esquire
Pa. ID No. 77291
Attorney for Plaintiff, Tzvia Wexler

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S RESPONSE TO
DEFENDANTS’ MOTION IN LIMINE TO PRECLUDE PHILADELPHIA POLICE
DEPARTMENT DIRECTIVES**

Plaintiff, by and through her undersigned counsel, submit this memorandum of law in support of her response to Defendants’ Motion in Limine to Preclude Evidence of the Philadelphia Police Department’s Directives.

I. BACKGROUND

This lawsuit arises out of Defendant Charmaine Hawkins’ assault of the Plaintiff, Tzvia Wexler, June 9, 2019, at or around 5th and Market Streets in Philadelphia, and the Plaintiff’s subsequent false arrest and unjust prosecution arising from the choking of Ms. Wexler, wherein Defendant Hawkins choked Ms. Wexler and then proceeded to levy false criminal charges against her. Defendant Hawkins was wearing a body-cam that, pursuant to Police Directives, should have been recording the entire interaction with Ms. Wexler. No body-cam recording has been produced in this matter.

II. LEGAL ARGUMENT

The Rules of Evidence embody a strong preference for admitting any evidence that may assist the trier of fact. Fed.R.Evid. 401 (defining "relevant evidence," all of which is generally

admissible, to mean "evidence having *any* tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" (emphases added)).

Here, there is no prejudice to the Defendants that the jury hear the truth about Officer Hawkins' violations of the directives. Unlike in *McKenna v. City of Philadelphia*, 582 F.#d 447 (3d Cir. 2009), Plaintiff is not attempting to introduce the violation as per-se evidence of a civil rights violation. Rather, the Defendant's violation of Philadelphia Police Directives was the reason for her malicious prosecution of Plaintiff.

The Defendants' motion is an attempt to keep the truth from the finder of fact. That choking a civilian is not allowed per Police Directives and that the body-cam should have been recording the entire interaction between Plaintiff and Defendant Hawkins. This evidence will in no way "confuse" the finder of fact. The opposite is true; it will inform the jury as to why a Police Officer would lie about an assault by the civilian she improperly choked. This evidence will aid the jury in assessing the evidence.

III. CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion *in limine* and not preclude from trial the introduction of Philadelphia Police Department Directives 1, 4.21, and 10.2.

Date: December 21, 2023

Respectfully submitted,

/s/ Thomas Malone
Thomas Malone, Esquire
Pa. ID No. 77291
Attorney for Plaintiff, Tzvia Wexler

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, Plaintiff's Response to Defendants' Motion in Limine was served upon all parties via the Court's electronic filing system.

Date: December 21, 2023

Respectfully submitted,

/s/ Thomas Malone
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